

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
MAR - 8 2017	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

STEPHANIE RIDGWAY,

Plaintiff,

3:15-cv-00002-HDM-WGC

vs.

JURY INSTRUCTIONS

SUN VALLEY GENERAL IMPROVEMENT  
DISTRICT,

Defendant.

Members of the Jury: Now that you have heard all of the evidence,  
it is my duty to instruct you on the law that applies to this case.

A copy of these instructions will be sent to the jury room for  
you to consult during your deliberations.

It is your duty to find the facts from all the evidence in the  
case. To those facts you will apply the law as I give it to you. You  
must follow the law as I give it to you whether you agree with it or  
not. And you must not be influenced by any personal likes or  
dislikes, opinions, prejudices, or sympathy. That means that you must  
decide the case solely on the evidence before you. You will recall  
that you took an oath to do so.

. . .

. . .

1 Please do not read into these instructions or anything that I may  
2 say or do or have said or done that I have an opinion regarding the  
3 evidence or what your verdict should be.

1 In reaching your verdict, you may consider only the testimony and  
2 exhibits received into evidence. Certain things are not evidence, and  
3 you may not consider them in deciding what the facts are. I will list  
4 them for you:

5 1. Arguments and statements by lawyers are not evidence. The  
6 lawyers are not witnesses. What they have said in their opening  
7 statements, closing arguments and at other times is intended to help  
8 you interpret the evidence, but it is not evidence. If the facts as  
9 you remember them differ from the way the lawyers have stated them,  
10 your memory of them controls.

11 2. Questions and objections by lawyers are not evidence.  
12 Attorneys have a duty to their clients to object when they believe a  
13 question is improper under the rules of evidence. You should not be  
14 influenced by the objection or by the court's ruling on it.

15 3. Testimony that is excluded or stricken, or that you have been  
16 instructed to disregard, is not evidence and must not be considered.  
17 In addition, sometimes testimony was received only for a limited  
18 purpose; where I have instructed you to consider certain evidence only  
19 for a limited purpose, you must do so and you may not consider that  
20 evidence for any other purpose.

21 4. Anything you may have seen or heard when the court was not  
22 in session is not evidence. You are to decide the case solely on the  
23 evidence received at the trial.

1 In deciding the facts in this case, you may have to decide which  
2 testimony to believe and which testimony not to believe. You may  
3 believe everything a witness says, or part of it, or none of it.

4 In considering the testimony of any witness, you may take into  
5 account:

- 6 (1) the opportunity and ability of the witness to see or hear  
7 or know the things testified to;
- 8 (2) the witness's memory;
- 9 (3) the witness's manner while testifying;
- 10 (4) the witness's interest in the outcome of the case, if any;
- 11 (5) the witness's bias or prejudice, if any;
- 12 (6) whether other evidence contradicted the witness's testimony;
- 13 (7) the reasonableness of the witness's testimony in light of  
14 all the evidence; and
- 15 (8) any other factors that bear on believability.

16 Sometimes a witness may say something that is not consistent with  
17 something else he or she said. Sometimes different witnesses will  
18 give different versions of what happened. People often forget things  
19 or make mistakes in what they remember. Also, two people may see the  
20 same event but remember it differently. You may consider these  
21 differences, but do not decide that testimony is untrue just because  
22 it differs from other testimony.

23 However, if you decide that a witness has deliberately testified  
24 untruthfully about something important, you may choose not to believe  
25 anything that witness said. On the other hand, if you think the  
26 witness testified untruthfully about some things but told the truth  
27 about others, you may accept the part you think is true and ignore the  
28 rest.

1       The weight of the evidence as to a fact does not necessarily  
2 depend on the number of witnesses who testify. What is important is  
3 how believable the witnesses were, and how much weight you think their  
4 testimony deserves.

1 Evidence may be direct or circumstantial. Direct evidence is  
2 direct proof of a fact, such as testimony by a witness about what that  
3 witness personally saw or heard or did. Circumstantial evidence is  
4 proof of one or more facts from which you could find another fact.  
5 You should consider both kinds of evidence. The law makes no  
6 distinction between the weight to be given to either direct or  
7 circumstantial evidence. It is for you to decide how much weight to  
8 give to any evidence.

1 Under the law, a general improvement district is considered to  
2 be a person. It can only act through its employees, agents,  
3 directors, or officers. Therefore, a general improvement district  
4 is responsible for the acts of its employees, agents, directors, and  
5 officers performed within the scope of authority.

1 All parties are equal before the law and a general improvement  
2 district is entitled to the same fair and conscientious consideration  
3 by you as any party.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Instruction # 6

1 The burden is on the plaintiff in a civil action, such as this,  
2 to prove every essential element of her claim by a preponderance of  
3 the evidence. If the proof should fail to establish any essential  
4 element of the plaintiff's claim by a preponderance of the evidence  
5 in the case, the jury should find for defendant as to that claim.

6 When a party has the burden of proof on any claim or affirmative  
7 defense by a preponderance of the evidence, it means you must be  
8 persuaded by the evidence that the claim or affirmative defense is  
9 more probably true than not true.  
10

11 You should base your decision on all of the evidence, regardless  
12 of which party presented it.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1       The first issue for you to decide is whether the defendant is  
2 immune from liability to the plaintiff. The defendant Sun Valley  
3 General Improvement District is immune from liability to the plaintiff  
4 for failing to inspect the pool whether or not a duty to inspect  
5 exists, and it is also immune from liability for failing to discover  
6 a hazard whether or not an inspection is performed.

7       However, defendant Sun Valley General Improvement District is not  
8 immune from liability to the plaintiff if you find that Sun Valley  
9 General Improvement District had express or actual knowledge at the  
10 time of the accident that the depth of the pool at the bottom of the  
11 slide was a hazard and could cause injury to the user of the slide  
12 such as plaintiff.

13       If you find under the facts of this case by a preponderance of  
14 the evidence that the defendant Sun Valley General Improvement  
15 District had express or actual knowledge at the time of the accident  
16 that the depth of the pool at the bottom of the slide was a hazard and  
17 could cause injury to the user of the slide such as the plaintiff then  
18 you will proceed to decide whether the defendant was negligent and  
19 whether the negligence was the proximate cause of injuries to the  
20 plaintiff.

21       If, however, you find under the facts of the case that the  
22 plaintiff has failed to prove by a preponderance of the evidence that  
23 defendant Sun Valley General Improvement District at the time of the  
24 accident had express or actual knowledge that the depth of the pool  
25 at the bottom of the slide was a hazard and could cause injury to the  
26 user of the slide such as the plaintiff, then you will return a  
27 verdict in favor of the defendant Sun Valley General Improvement  
28 District and against plaintiff by answering Question No. 1 of the

1 verdict "no" and you will not consider the plaintiff's claim of  
2 negligence against the defendant and the court will enter a judgment  
3 in favor of the defendant and against the plaintiff.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Instruction # 8

The plaintiff claims that the defendant was negligent. I will now instruct you on the law relating to this claim.

Instruction # 9

1 The plaintiff has the burden to prove by a preponderance of the  
2 evidence all of the facts necessary to establish the following:

3 1. That the defendant was negligent; and

4 2. That defendant's negligence was a proximate cause of any  
5 injury plaintiff may have sustained.

6 The defendant has the burden of proving, as an affirmative  
7 defense by a preponderance of the evidence all of the facts necessary  
8 to establish the following:

9 1. That the plaintiff was negligent; and

10 2. That plaintiff's negligence was a proximate cause of any  
11 injury plaintiff may have sustained.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 When I use the word "negligence" in these instructions, I mean  
2 the failure to do something which a reasonably careful person would  
3 do, or the doing of something which a reasonably careful person would  
4 not do, to avoid injury to themselves or others, under circumstances  
5 similar to those shown by the evidence.

6 It is the failure to use ordinary or reasonable care.

7 Ordinary or reasonable care is that care which persons of  
8 ordinary prudence would use in order to avoid injury to themselves or  
9 others under circumstances similar to those shown by the evidence.

10 The law does not say how a reasonably careful person would act  
11 under those circumstances. That is for you to decide.

12 You will note that the person whose conduct we set up as a  
13 standard is not the extraordinarily cautious individual, nor the  
14 exceptionally skillful one, but a person of reasonable and ordinary  
15 prudence.

16

17

18

19

20

21

22

23

24

25

26

27

28

1       The mere fact that there was an accident and that plaintiff was  
2 injured is not of itself sufficient to establish that the defendant  
3 was negligent. Negligence is never presumed but must be established  
4 by a preponderance of the evidence.

1 A proximate cause of injury, damage, loss or harm is a cause  
2 which, in the natural and continuous sequence, produces the injury,  
3 damage, loss or harm, and without which the injury, damage, loss, or  
4 harm would not have occurred.  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

27 Instruction # 13  
28

1 A plaintiff must exercise ordinary care on her own behalf.  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Instruction # 14

1       The defendant is not liable to the plaintiff if the injury  
2 resulted from a danger which was obvious or should have been observed  
3 in the exercise of reasonable care.

1 It is the duty of the court to instruct you about the measure of  
2 damages. By instructing you on damages, the court does not mean to  
3 suggest for which party your verdict should be rendered.

4 Damages must be reasonable. If you should find that the  
5 plaintiff is entitled to a verdict, you may award her only such  
6 damages as will reasonably compensate her for such injury and damages  
7 as you find, from a preponderance of the evidence in this case, that  
8 she has sustained as a proximate result of the incident.

9 Such damages may include the reasonable medical expenses  
10 plaintiff has necessarily incurred as a result of the incident, and  
11 the physical and mental pain and suffering, anguish and disability  
12 endured by the plaintiff.

13 You are not permitted to award speculative damages. So, you are  
14 not to include in any verdict compensation for any prospective loss  
15 which, although possible, it is not reasonably certain to occur in the  
16 future.

17

18

19

20

21

22

23

24

25

26

27

28

1 No definite standard is prescribed by law by which to fix  
2 reasonable compensation for pain and suffering. Nor is the opinion  
3 of any witness required as to the amount of such reasonable  
4 compensation. In making an award for pain and suffering, you shall  
5 exercise your authority with calm and reasonable judgment and any  
6 damages you fix shall be just and reasonable in light of the evidence.

1 The plaintiff may not recover damages if her comparative  
2 negligence is greater than the negligence of the defendant. However,  
3 if the plaintiff is negligent, the plaintiff may still recover a  
4 reduced sum so long as her comparative negligence was not greater than  
5 the negligence of the defendant.

6 If you determine that the plaintiff is entitled to recover, you  
7 shall return by general verdict the total amount of damages sustained  
8 by the plaintiff without regard to her comparative negligence and you  
9 shall indicate the percentage of negligence attributable to each  
10 party.

11 The percentage of negligence attributable to the plaintiff shall  
12 reduce the amount of such recovery by the proportionate amount of such  
13 negligence and the reduction will be made by the Court.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 Before you begin your deliberations, elect one member of the jury  
2 as your presiding juror. The presiding juror will preside over the  
3 deliberations and serve as the spokesperson for the jury in court.

4 You shall diligently strive to reach agreement with all of the  
5 other jurors if you can do so. Your verdict must be unanimous.

6 Each of you must decide the case for yourself, but you should do  
7 so only after you have considered all the evidence, discussed it fully  
8 with the other jurors, and listened to their views.

9 It is important that you attempt to reach a unanimous verdict  
10 but, of course, only if each of you can do so after having made your  
11 own conscientious decision. Do not be unwilling to change your  
12 opinion if the discussion persuades you that you should. But do not  
13 come to a decision simply because other jurors think it is right, or  
14 change an honest belief about the weight and effect of the evidence  
15 simply to reach a verdict.

16 A verdict form has been prepared for you. After you have reached  
17 a unanimous agreement on a verdict, your presiding juror should  
18 complete the verdict form according to your deliberations, sign and  
19 date it, and advise the bailiff that you are ready to return to the  
20 courtroom.

21 If it becomes necessary during your deliberations to communicate  
22 with me, you may send a note through the bailiff, signed by any one  
23 or more of you. No member of the jury should ever attempt to  
24 communicate with me except by a signed writing. I will not  
25 communicate with any member of the jury on anything concerning the  
26 case except in writing or here in open court. If you send out a  
27 question, I will consult with the lawyers before answering it, which  
28 may take some time. You may continue your deliberations while waiting

1 for the answer to any question. Remember that you are not to tell  
2 anyone -- including the court -- how the jury stands, whether in terms  
3 of vote count or otherwise, until after you have reached a unanimous  
4 verdict or have been discharged.

5 Dated this 8<sup>th</sup> day of March, 2017.

6  
7  
8   
9 Howard D. McKibben  
Senior U.S. District Judge

1       A hazard is a condition that posed a danger and risk of injury  
2 to the plaintiff Stephanie Ridgway in the use of the defendant's slide  
3 and pool.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28